



Amendment No. 2
To
Contract No. NA160000129
For
Spoils Disposal
Between
AGH2O Holdings, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be August 11, 2020 through August 10, 2021. One option will remain.
- 2.0 The total contract amount is increased by \$1,411,200.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/11/2016 – 08/10/2019	\$4,233,600.00	\$4,233,600.00
Amendment No. 1: Option 1 – Extension 08/11/2019 – 08/10/2020	\$1,411,200.00	\$5,644,800.00
Amendment No. 2: Option 2 – Extension 08/11/2020 – 08/10/2021	\$1,411,200.00	\$7,056,000.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: James R. Lesko 5/20/2020

Printed Name: JAMES R. LESKO
Authorized Representative

AGH2O Holdings, LLC
3817 Bent Brook Drive
Round Rock, Texas 78664
(512) 484-7611
jlesko@austin.rr.com

Sign/Date: Matthew Duree
Digitally signed by
Matthew Duree
Date: 2020.08.03
12:01:56 -05'00'

Matthew Duree
Procurement Manager
City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701



Amendment No. 1
To
Contract No. NA160000129
For
Spoils Disposal
Between
AGH2O Holdings, LLC
and the
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be August 11, 2019 through August 10, 2020. Two options will remain.
- 2.0 The total contract amount is increased by \$1,411,200.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 08/11/2016 – 08/10/2019	\$4,233,600.00	\$4,233,600.00
Amendment No. 1: Option 1 – Extension 08/11/2019 – 08/10/2020	\$1,411,200.00	\$5,644,800.00

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date:

James R Lesko 7/11/19

Printed Name: JAMES R LESKO
Authorized Representative

AGH2O Holdings, LLC
3817 Bent Brook Drive
Round Rock, Texas 78664
(512) 484-7611
jlesko@austin.rr.com

Sign/Date:

[Signature]

Matthew Duree
Procurement Manager

City of Austin
Purchasing Office
124 W. 8th Street, Ste. 310
Austin, Texas 78701

7-26-19



City of Austin

Purchasing Office, Financial Services Department

P.O. Box 1088, Austin, TX 78767

August 11, 2016

AGH2O Holdings LLC
3817 Bent Brook Dr.
Round Rock, TX 78664
jlesko@austinnrr.com

Dear James Lesko:

The Austin City Council approved the execution of a contract with your company for spoils disposal in accordance with the referenced solicitation.

Responsible Department:	Austin Water
Department Contact Person:	Darrell Richmond
Department Contact Email Address:	Darrell.Richmond@austintexas.gov
Department Contact Telephone:	512-972-0313
Project Name:	Spoils Disposal
Contractor Name:	AGH2O Holdings LLC
Contract Number:	MA 2200 NA160000129
Contract Period:	August 11, 2016 – August 10, 2019
Dollar Amount	\$4,233,600
Extension Options:	Three 12-month extension options
Extension Option Dollar Amount:	\$1,411,200 (per option)
Requisition Number:	15121600160
Solicitation Type & Number:	IFB EAD0250
Agenda Item Number:	38
Council Approval Date:	August 4, 2016

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Joshua Pace
Buyer II
City of Austin
Purchasing Office

cc: Darrell Richmond

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
AGH2O HOLDINGS LLC (“Contractor”)
for
Spoils Disposal
MA 2200 NA160000129**

The City accepts the Contractor’s Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between AGH2O HOLDINGS LLC having offices at Round Rock, TX 78664 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number IFB EAD0250.

1.1 This Contract is composed of the following documents:

1.1.1 This Contract

1.1.2 The City’s Solicitation, Invitation for Bids (IFB) 2200 EAD0250 including all documents incorporated by reference

1.1.3 AGH2O Holdings LLC’s Offer, dated 5/9/16, including subsequent clarifications

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 This Contract

1.2.2 The City’s Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference

1.2.3 The Contractor’s Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract. The Contract will be in effect for an initial term of thirty-six (36) months and may be extended thereafter for up to three (3) additional twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$4,233,600 for the initial Contract term and \$1,411,200 for each extension option. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

AGH2O Holdings LLC

James Lesko

Printed Name of Authorized Person

James R. Lesko

Signature

General Manager

Title:

8/9/16

Date:

CITY OF AUSTIN

C. Danielle Lord

Printed Name of Authorized Person

C. Danielle Lord

Signature

Corporate Purchasing Manager

Title:

8/9/16

Date:



CITY OF AUSTIN, TEXAS

Purchasing Office INVITATION FOR BID (IFB) OFFER SHEET

SOLICITATION NO: EAD0250

DATE ISSUED: 4/25/16

REQUISITION NO.: 15121600160

COMMODITY CODE: 98846

COMMODITY/SERVICE DESCRIPTION: Spoils Disposal

BID DUE PRIOR TO: 5/10/16, 2:00 PM, Central time

BID OPENING TIME AND DATE: 5/10/16, 2:15 PM, Central time

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 308, AUSTIN, TEXAS 78701

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSONS:**

Erin D'Vincent
Senior Buyer Specialist
Phone: (512) 974-3070
E-Mail: Erin.DVincent@austintexas.gov

Georgia Billela
Senior Buyer
Phone: (512) 974-2939
E-Mail: Georgia.Billela@austintexas.gov

LIVE BID OPENING ONLINE:

For information on how to attend the Bid Opening online, please select this link: <http://www.austintexas.gov/department/bid-opening-webinars>

When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as shown below:

Address for US Mail (Only)	Address for Fedex, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response for Solicitation # IFB EAD0250	Purchasing Office-Response Enclosed for Solicitation # IFB EAD0250
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving on time. See Section 0200 for additional solicitation instructions.

All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

The Vendor agrees, if this Offer is accepted within 120 calendar days after the Due Date, to fully comply in strict accordance with the Solicitation, specifications and provisions attached thereto for the amounts shown on the accompanying Offer.

**SUBMIT 1 ORIGINAL AND 1 ELECTRONIC COPY IN PDF ON A FLASH DRIVE OF YOUR
RESPONSE**

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	7
0500	SCOPE OF WORK	3
0600	BID SHEET – Must be completed and returned with Offer	1
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0700	REFERENCE SHEET – Complete and return	2
0800	NON-DISCRIMINATION CERTIFICATION	*
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0815	LIVING WAGES CONTRACTOR CERTIFICATION–Complete and return	1
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0900	MBE/WBE PROCUREMENT PROGRAM PACKAGE NO GOALS FORM – Complete & return	2

*** Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:**

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

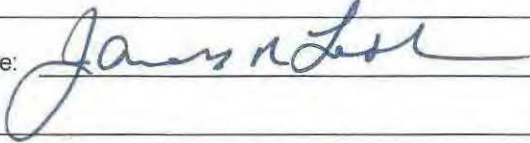
If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

INTERESTED PARTIES DISCLOSURE

In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 “Certificate of Interested Parties” that is signed and notarized for a contract award requiring council authorization. The “Certificate of Interested Parties” form must be completed on the Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: AGH20 HOLDINGS LLC
Company Address: 3817 BENT BROOK DR
City, State, Zip: ROUND ROCK TX 78664
Federal Tax ID No. [REDACTED]
Printed Name of Officer or Authorized Representative: JAMES R. LESKO
Title: GEN. MGR.
Signature of Officer or Authorized Representative: 
Date: 5/9/16
Email Address: JLESKO@AUSTIN.RR.COM
Phone Number: (512) 484 7611

* Completed Bid Sheet, section 0600 must be submitted with this Offer sheet to be considered for award

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

**CITY OF AUSTIN
PURCHASING OFFICE
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harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. RIGHT TO AUDIT:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. The Contractor shall include section a. above in all subcontractor agreements entered into in connection with this Contract.

18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

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- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
- i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.
19. **WARRANTY-PRICE:**
- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
 - B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
 - C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.

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- B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.
23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event

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that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.
30. **DELAYS:**
- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In

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the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

A. Definitions:

- i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
- ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

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- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.
34. **NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the

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City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.

35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.
39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

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41. **GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.
48. **DISPUTE RESOLUTION:**
- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as

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described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.
49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.
50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.
51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

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52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

- A. **Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.
- B. **Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

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- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office by email to erin.dvincent@austintexas.gov no later than close of business on May 2, 2016.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

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- (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
 - (d) Contractor or Subcontractor(s) responsible for transporting any hazardous materials under this contract shall provide pollution coverage. Federal law requires interstate or intrastate transporters of hazardous materials to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting hazardous materials in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of hazardous materials in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of hazardous materials shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of hazardous materials. The endorsement shall, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous materials arising from fire, wind, hail, lightning, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.
- iv. **Environmental Impairment Liability Insurance:** A minimum limit of \$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of sudden and accidental or non-sudden and accidental pollution arising out of the excavation, transportation, storage, or permanent disposal of hazardous and non-hazardous wastes including fuel.

With respect to sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a treatment, storage or disposal facility must demonstrate financial responsibility for bodily injury and property damage to third parties of at least \$5,000,000 per occurrence.

With respect to non-sudden and accidental occurrences, all Contractors and/or Subcontractors who own or operate a surface impoundment, landfill or treatment facility that is used to manage hazardous wastes must demonstrate financial responsibility for bodily injury and property damage to third parties of at least \$5,000,000 per occurrence. The amounts of coverage must be exclusive legal defense costs.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

3. TERM OF CONTRACT:

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- A. The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to 3 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first 12 months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
4. **QUANTITIES:** The quantities listed herein are annual estimates for the first year of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
5. **PICK UP REQUIREMENTS:**
- Location: To be disclosed upon each notification to the vendor.
- A. Pick up is to be made within 4 hours after the order is placed (either verbally or in writing).
- B. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
- C. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).
6. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)
- A. Invoices shall be mailed within 10 working days after the bi-weekly billing period. Invoices shall not arrive prior to the end of the bi-weekly billing period. Invoice shall reference the date and delivery ticket number of each load of spoils hauled during that bi-weekly period. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices" as well as the quantity of loads of spoils materials hauled for the bi-weekly period, price per load, contract number and purchase order number. Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the following addresses:

	City of Austin
Department	Austin Water
Attn:	A/P – Southeast Service Center – Regina Luna
Address	3907 S. Industrial Dr.
City, State Zip Code	Austin, TX 78744

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	City of Austin
Department	Austin Water
Attn:	A/P – North Service Center – Regina Luna
Address	901 W. Koenig Ln.
City, State Zip Code	Austin, TX 78756

	City of Austin
Department	Austin Water
Attn:	A/P – East Service Center – Regina Luna
Address	6301 Harold Court
City, State Zip Code	Austin, TX 78721

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

7. HAZARDOUS MATERIALS:

- A. If this Solicitation involves hazardous materials, the Offeror shall furnish with the Offer Material Safety Data Sheets (MSDS), (OSHA Form 20), on all chemicals and hazardous materials specifying the generic and trade name of product, product specification, and full hazard information including receiving and storage hazards. Instructions, special equipment needed for handling, information on approved containers, and instructions for the disposal of the material are also required.
- B. Failure to submit the MSDS as part of the Offer may subject the Offer to disqualification from consideration for award.
- C. The MSDS, instructions and information required in paragraph "A" must be included with each shipment under the contract.

8. LIVING WAGES:

- A. The minimum wage required for any Contractor employee directly assigned to this City Contract is \$13.03 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (**see the Living Wages Contractor Certification included in the Solicitation**) with their Offer certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$13.03 per hour. The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

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- C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).
- D. The Contractor shall provide to the Department's Contract Manager with the first invoice, individual Employee Certifications for all employees directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each employee directly assigned to the contract. The Employee Certification form is available on-line at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.
- E. Contractor shall submit employee certifications annually on the anniversary date of contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for employees added to the contract and/or to report any employee changes as they occur.
- F. The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision.

9. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

10. ECONOMIC PRICE ADJUSTMENT:

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first 12-months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant

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to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: Producer Price Index	
Series ID: PCU56211-56211	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: All	
Description of Series ID: Waste Collection	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

- E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

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- F. If the requested adjustment is not supported by the referenced index, the City, at its sole discretion, may consider approving an adjustment on fully documented market increases.
11. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.
12. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Darrell Richmond

Darrell.Richmond@austintexas.gov

512-972-0313

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.



SCOPE OF WORK FOR SPOILS DISPOSAL LAND FILL SERVICES

1.0 Purpose

This scope of work establishes the minimum requirements for land fill disposal services for spoils, asphalt, and sewage contaminated spoils generated by the City of Austin Water (AW) Department Pipeline Operations & Maintenance unit and Investigations and Rehabilitation unit. The City is looking to contract with a hauling firm that has the equipment necessary to haul and remove spoils to an approved permitted landfill on an as needed basis. The contractor shall include all fees and services required to haul and dispose of spoils.

2.0 Contractor General Requirements

2.1. Spoils Materials: The Contractor shall accept spoils materials such as flexible base, asphalt, hot mix asphaltic concrete, concrete, asphalt millings, soil, vegetation, rock, and other debris generated from street repair and maintenance activities.

2.2 Haul off locations- The contractor will haul spoils loaded by City staff primarily from 3907 S. Industrial Dr, Austin Texas 78744. Hauls may also be required from 10404 McKalla Place, Austin Texas 78758 (entrance gate on Burnet Rd. behind Discount Tire) but at much less frequency.

2.3 Bidders shall indicate on the bid sheet if they can accept Sewage Contaminated Spoils. If bidder can accept sewage contaminated spoils, bidder shall provide proof that they are permitted to accept such materials in accordance with section 2.1.5 below.

2.4 Spoils Disposal Site: The Contractor shall provide a spoils disposal site that is located within Travis County.

2.4.1 The Contractor shall furnish all labor, tools, and equipment necessary to haul spoils from City designated area's to Contractor's disposal site. AW will provide an experienced operator and the equipment to load spoils into Contractor trucks/equipment.

2.4.2 AW reserves the right to haul materials to Contractor's disposal site at any frequency within the Contractor's operating hours with City owned trucks.

2.4.3 The site shall have an all-weather road from the street to the dump site.

2.4.4 The site shall be open for spoils disposal from 7:30 a.m. to 3:30 p.m. Monday through Friday, weather permitting. The site shall be open for Saturday disposal during normal operating hours of 7:30 a.m. through 3:30 p.m. The Contractor will be notified 3 days in advance if disposal services will

be required on Saturdays.

2.4.5 Only City of Austin trucks shall be allowed to dump spoils materials at Contractor's facility. If multiple City trucks are at the Contractor's facility at the same time, trucks should be prioritized on a first in first out basis.

2.4.6 Contractor shall come pick up spoils with four (4) hours when contacted by AW that there are at least a minimum of six (6) loads to be picked up. The frequency of the call outs will depend on the number of spoils collected by AW.

2.5 Permits: The Contractor shall dispose of all spoils materials in accordance with all Federal, State, and Local regulations. The Contractor shall have all applicable permits required for the spoils disposal site and the designated facility is required to have all proper permits from Texas Commission on Environmental Quality (TCEQ) at the time of bid submission. The Contractor shall provide a copy of all permits with the bid package. At any time during the life of the contract, when such permits are amended, renewed, or replaced, the Contractor shall notify the City. **BY SIGNATURE ON THE OFFER SHEET, BIDDER CERTIFIES THE COMPANY OR CONTRACTOR IS IN COMPLIANCE WITH TEXAS COMMISSION ON ENVIRONMENTAL QUALITY SITE REQUIREMENTS, IF APPLICABLE.**

2.6 Ownership of Spoils: The Contractor shall assume all responsibility of spoils material when deposited at the Contractors spoils disposal site by the City or when the spoils are loaded into Contractor equipment/trucks.

2.7 Diversion of Spoils: The following materials shall be diverted from land disposal through beneficial reuse, composting, or recycling: concrete, asphalt millings, soil, vegetation, and rock if available.

2.8 Safety: The contractor shall be responsible for job safety at the spoils landfill site. During performance of the work, Contractor shall provide and maintain all passageways, guard fences, lights, and other protective measures required by applicable laws, rules, regulations, ordinances, and local conditions. Contractor is responsible for the continuous monitoring of safety conditions on the job site to determine if it is safe and suitable for spoils disposals. If an unsafe condition arises or exists on the job site directly or indirectly affecting the Contractor's performance of the service, the Contractor shall take corrective action of the unsafe condition prior to performing work. Contractor personnel shall follow safety related directions from AW personnel while on City property.

2.9 Measurement and Payment: The services provided will be paid for at the unit price per truck load listed in Section 0600 Bid Sheet. A load shall be defined as any amount of spoils materials up to 24 cubic yards loaded on a tandem axle dump truck. Contractor shall provide a receipt to AW representative for each truckload of spoils material hauled.

3.0 City Responsibilities

3.1.1 AW personnel will be responsible for safety at the loading site on City property.

Contractor personnel shall follow safety related directions from AW personnel while on City property.

3.1.2 The City will notify Contractor of any non-City truck (hired trucking services) that will be disposing of soils at Contractor's facility.

4.0 Basis for Award

Award will be made to the lowest most responsive, most responsible bidder. The City reserves the right to award by line item, to multiple vendors, or as a whole to the lowest most responsive, most responsible bidder, whichever the City deems to be the most advantageous.

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BID SHEET FOR
SPOILS DISPOSAL

BID NO. IFB EAD0250

RQM NO. 15121600160

DUE DATE: 5/10/16, 2:00 PM, local time

BUYER: Erin D'Vincent

Copies of Bid: Vendor must submit one original paper copy of its signed bid.

Special Instructions: Be advised that exceptions taken to any portion of the solicitations may jeopardize acceptance of the bid. Offeror may furnish pricing for all or any portion of Section 0600 Bid Sheet. Award may be based on the best price per line item or as one total award, whichever the City deems to be the most advantageous.

ITEM NO.	ITEM DESCRIPTION	ESTIMATED ANNUAL QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE
1	24 yard truck load for Contractor disposal of non-sewage contaminated spoils	2,000	Truck Load	\$ 174.00	\$ 348,000.00
2	24 yard truck load for Contractor disposal including sewage contaminated spoils	2,000	Truck Load	\$ 200.00	\$ 400,000.00
3	18 yard truck load for Contractor disposal of non-sewage contaminated spoils	2,000	Truck Load	\$ 138.00	\$ 276,000.00
4	18 yard truck load for Contractor disposal including sewage contaminated spoils	2,000	Truck Load	\$ 175.00	\$ 350,000.00
5	City of Austin drop off of 12 yard truck load disposal of non-sewage contaminated spoils	400	Truck Load	\$ 45.00	\$ 18,000.00
6	City of Austin drop off of 12 yard truck load disposal of sewage contaminated spoils	400	Truck Load	\$ 48.00	\$ 19,200.00
TOTAL PRICE					\$ 1,531,200.00

FOR INFORMATIONAL PURPOSES ONLY NOT TO BE USED IN DETERMINATING AWARD

7	12 yard truck load for Contractor disposal of non-sewage contaminated spoils	4,000	Truck Load	\$ 100.00	\$ 400,000.00
8	12 yard truck load for Contractor disposal including sewage contaminated spoils	4,000	Truck Load	\$ 150.00	\$ 600,000.00

The following documents are required to be completed and submitted with the Offer. Please check the boxes below as confirmation.

<input checked="" type="checkbox"/>	Offer Sheet
<input checked="" type="checkbox"/>	Bid Sheet (Section 0600)
<input checked="" type="checkbox"/>	Reference Sheet (Section 0700)
<input checked="" type="checkbox"/>	Nonresident Bidder Provisions (Section 0835)
<input checked="" type="checkbox"/>	Local Business Presence Identification Form (Section 0605) *For an Offeror's Local Business Presence to be considered, this form must be completed and returned with the Offer.*
<input checked="" type="checkbox"/>	Copies of permits as required in Section 0500 Scope of Work item 2.5
<input checked="" type="checkbox"/>	I understand that failure to submit the completed forms above will result in disqualification of my Offer.

Company Name: AgH2O HOLDINGS LLC

Address: 3819 BENT BROOK DR Round Rock TX 78664

Signature of Authorized Representative: *James R. Lesko*

Printed Name: JAMES R. LESKO

Telephone No: 512 484 7611 Fax No: -

Email Address: JLesko@Austin-RR.com

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBEWBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR: AGH20 HOLDINGS LLC

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	<u>No</u>
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?		<u>NO</u>
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	<u>Yes</u>	No

SUBCONTRACTOR(S):

Name of Local Firm	<u>KELLEY CORP.</u>	
Physical Address	<u>HENRIOTZ LANE NEAR DALTON LANE, EDWIN ROAD</u>	
Is your headquarters located in the Corporate City Limits? (circle one)	<u>Yes</u>	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	<u>Yes</u>	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

Section 0700: Reference Sheet

Responding Company Name Agh20 HOLDINGS LLC

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

PLS See ATT.

1. Company's Name _____
Name and Title of Contact _____
Project Name _____
Present Address _____
City, State, Zip Code _____
Telephone Number (____) _____ Fax Number (____) _____
Email Address _____

2. Company's Name _____
Name and Title of Contact _____
Project Name _____
Present Address _____
City, State, Zip Code _____
Telephone Number (____) _____ Fax Number (____) _____
Email Address _____

3. Company's Name _____
Name and Title of Contact _____
Project Name _____
Present Address _____
City, State, Zip Code _____
Telephone Number (____) _____ Fax Number (____) _____
Email Address _____

Section 0815: Living Wages Contractor Certification

Company Name Agh2o HOLDINGS LLC

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$13.03 per hour.

The below listed employees of the Contractor who are directly assigned to this contract are compensated at wage rates equal to or greater than \$13.03 per hour.

Employee Name	Employee Job Title

USE ADDITIONAL PAGES AS NECESSARY

- (1) All future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$13.03 per hour
- (2) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each affected employee the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision or fraudulent statements made on this certification may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment, or result in legal action.

Section 0835: Non-Resident Bidder Provisions

Company Name AgH2O HOLDINGS LLC

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: RESIDENT BIDDER

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder id a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

Section 0900: Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Form

SOLICITATION NUMBER: EAD0250
PROJECT NAME: Spoils Disposal

The City of Austin has determined that no goals are appropriate for this project. Even though goals were not assigned for this solicitation, the Bidder/Proposer is required to comply with the City's MBE/WBE Procurement Program, if areas of subcontracting are identified.

If any service is needed to perform the Contract and the Bidder/Proposer does not perform the service with its own workforce or if supplies or materials are required and the Bidder/Proposer does not have the supplies or materials in its inventory, the Bidder/Proposer shall contact the Small and Minority Business Resources Department (SMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Bidder/Proposer must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract, using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

Will subcontractors or sub-consultants or suppliers be used to perform portions of this Contract?

☒ **No** If no, please sign the No Goals Form and submit it with your Bid/Proposal in a sealed envelope

☐ **Yes** If yes, please contact SMBR to obtain further instructions and an availability list and perform Good Faith Efforts. Complete and submit the No Goals Form and the No Goals Utilization Plan with your Bid/Proposal in a sealed envelope.

After Contract award, if your firm subcontracts any portion of the Contract, it is a requirement to complete Good Faith Efforts and the No Goals Utilization Plan, listing any subcontractor, sub-consultant, or supplier. Return the completed Plan to the Project Manager or the Contract Manager.

I understand that even though goals were not assigned, I must comply with the City's MBE/WBE Procurement Program if subcontracting areas are identified. I agree that this No Goals Form and No Goals Utilization Plan shall become a part of my Contract with the City of Austin.

Ag1420 HOLDINGS LLC
Company Name

JAMES R. LESKO GEN. MGR.
Name and Title of Authorized Representative (Print or Type)

James R. Lesko
Signature

5/9/16
Date

Minority- and Women-Owned Business Enterprise (MBE/WBE) Procurement Program No Goals Utilization Plan
(Please duplicate as needed)

SOLICITATION NUMBER:	EAD0250
PROJECT NAME:	Spoils Disposal

PRIME CONTRACTOR / CONSULTANT COMPANY INFORMATION

Name of Contractor/Consultant			
Address			
City, State Zip			
Phone Number		Fax Number	
Name of Contact Person			
Is Company City certified?	Yes <input type="checkbox"/> No <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture <input type="checkbox"/>		

I certify that the information included in this No Goals Utilization Plan is true and complete to the best of my knowledge and belief. I further understand and agree that the information in this document shall become part of my Contract with the City of Austin.

Name and Title of Authorized Representative (Print or Type)

Signature _____
Date

Provide a list of all proposed subcontractors / sub-consultants / suppliers that will be used in the performance of this Contract.
Attach Good Faith Effort documentation if non MBE/WBE firms will be used.

Sub-Contractor / Sub-Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethics / Gender Code: <input type="checkbox"/> Non-Certified		
Vendor ID Code			
Contact Person		Phone Number	
Amount of Subcontract	\$		
List commodity codes & description of services			

Sub-Contractor / Sub-Consultant			
City of Austin Certified	MBE <input type="checkbox"/> WBE <input type="checkbox"/> Ethics / Gender Code: <input type="checkbox"/> Non-Certified		
Vendor ID Code			
Contact Person		Phone Number	
Amount of Subcontract	\$		
List commodity codes & description of services			

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:	
Having reviewed this plan, I acknowledge that the proposer (HAS) or (HAS NOT) complied with City Code Chapter 2-9A/B/C/D, as amended.	
Reviewing Counselor _____	Date _____ Director/Deputy Director _____ Date _____



AgH₂O Holdings, L.L.C.

3817 Bent Brook Dr.
Round Rock, TX 78664
(512) 484-7611
(512) 238-1261
jlesko@austin.rr.com
www.agh2oco.com

AGH2O Holdings, LLC-Business References:

<p>Austin Housing Finance Corp. Mr. Randal Bishop 1100 E. 11th Street Austin, TX 78702 (512) 590-0039 Randal.bishop@austinrexas.gov</p> <p>San Marcos Public Housing Authority Mr. Albert Sierra, Director 1201 Thorpe lane San Marcos, TX 78666 (512) 353-5058 sierra@smpha.org</p> <p>Housing Authority City of Austin Mr. James Teasdale-Construction Director 1124 S. IH 35 Austin, TX 78704 (512) 477-4488 jimt@hacanet.org</p>	<p>City of Austin Water Utility Mrs. Regina Luna 3907 S. Industrial Avenue Austin, TX 78744 (512) 972-1235 Regina.Luna@austintexas.gov</p> <p>502nd Contracting Squadron Mr. Phillip Pena 2202 15th St. Ft. Sam Houston, TX 78234 (210) 221-5665 Phillip.a.pena4.civ@mail.mil</p> <p>C.T Walker, LLC Ms. Cassandra Walker-Owner PO Box 142691 Austin, TX 78714-2691 (512) 300-3080 ct.walker@austin.rr.com</p>
<p>MST Construction Mr. Donnie Gerault-President 5910 Courtyard Drive, Suite 240 Austin, TX 78731-3358 (512) 791-4144 dgerault@mstcon.com</p> <p>Kiva, Inc. Mr. Gary Griffin 1501 Hillside Terrace Buda, TX 78610 (512) 295-8900 Gary.griffin@kiainc.com</p>	<p>City of San Antonio Parks & Recreation Mr. Michael Rubanka-Senior Horticulturist 5800 Old Hwy. 90 W San Antonio, TX 78227 (210) 207-3215 Michael.rubanka@sanantonio.gov</p>

AGH2O Holdings, LLC

3817 Bent Brook Dr.
Round Rock, TX 78664
(512) 484-7611
(512) 238-1261 Facsimile
jlesko@austin.rr.com
www.agh2oco.com

AGH2O Holdings, LLC is a General Contracting and Construction Management firm committed to performing quality work, on time and within budget. We strive to exceed our clients expectations at all times. AGH2O Holdings, LLC is a total small business focusing on CSI divisions 1-16 with a focus on civil site work, utilities and foundations. We also supply all types of equipment and construction materials.

We are located in Round Rock just northeast of Austin. We are currently bondable up to \$1.2M aggregate, fully insured and will provide only a safely trained and fully documented workforce. We are approved to bid on TXDOT projects to \$300k aggregate and registered with the Federal government Central Contractors Registry and many local and statewide (TX) agencies. AGH2O is also rated A+ by the Better Business Bureau

Our insurance agent is Insurors of TX. Please contact Mrs. Pam Jones, VP at (254) 759-3764. Our Bonding Agent is Mr. Tom Hewitt of BDI Insurance (830) 303-9556. Our business account is held with IBC Bank, 1850 Gattis School Rd., Round Rock, TX 78664. Please contact Mrs. Deborah Portman at (512) 397-4506. Our credit line account is held by Wells Fargo Bank. Please contact Mr. Jason Chesser at (830) 608-2423.

We only employ competent and professional personnel, subcontractors and vendors who are experienced and committed to upholding our high standards and jobsite safety requirements. We are also committed to maximizing employment opportunities for all M/W/DBE enterprises to the fullest extent possible on every project.

The owner and general manager for AGH2O Holdings, LLC is James R. Lesko, P.E. James is a 25 year experienced project manager and TX and DE licensed professional engineer who has completed numerous public projects ranging from \$10k to over \$100M.

Our clients include:

1. Housing Authority Cities of Austin, San Marcos, Smithville & La Grange.
2. Iron Mountain Records Management
3. Austin Housing Finance Corporation
4. Community Health & Rehabilitation
5. Austin Area Urban League
6. City of Austin Parks and Recreation
7. City of Austin Water Utility
8. Bexar and Williamson County Purchasing
9. San Antonio ISD
10. TX Dept. of Assistive and Rehabilitative Services
11. City of San Antonio Parks and Recreation Dept.
12. MST Construction
13. Cities of Austin, Cedar Park, Leander, Garden Ridge, Round Rock and San Marcos
14. Rutgers-The State University of NJ
15. Texas Parks and Wildlife Department

16. Hays County Public Works
17. Chisholm Trail SUD
18. Williamson County Public Works

AGH2O Holdings, LLC Credit References:

D&B #783199578

Marcelo's Sand and Loam
PO Box 19415
Austin, TX 78760
(512) 385-6965
(512) 385-6963
Ms. Mary Nuncio

Vulcan Construction Materials, LP
PO Box 849131
Dallas, TX 75284-9131
(800) 777-8752
Customer #89998-208919
Accounts Receivable

APAC Texas, Inc.
Austin Aggregates
1 Chisholm Trail Ste 450
Round Rock, TX 78681
(512) 861-7100
Accounts Receivable

Martin Marietta
PO Box 677061
Dallas, TX 75267
(210) 208-4087
Customer #784494

Kiva, Inc.
1501 Hillside Terrace
Buda, TX 78610
(512) 203-3144
Mr. Gary Griffin

Ferguson Supply
2551 N. Mays
Round Rock, TX 78665
(51) 248-4050
(512) 341-8980 Fax
Ms. Peggy Perks



City of Austin

Founded by Congress, Republic of Texas, 1839

Watershed Protection and Development Review Department

P.O. Box 1088, Austin, Texas 78767

May 24, 2006

Paul Linehan
Land Strategies
1010 Land Creek Cove Suite 100
Austin, Texas 78746

Subject: Capital Aggregates

Dear Mr. Linehan:

This letter is sent as follow up to the meeting held on May 12, 2006, with Paul Linehan of Land Strategies and Terry Bray of Graves, Heron, Dougherty, & Moody (I think this is still the firm's name) Susan Scroggins and me. We discussed whether or not a site development permit was required for a parcel of property described as 308.61 acres Portion of Volume 378 page 463 Volume 491 Page 556. This property is generally located on Hergotz Lane near Dalton Lane and Edwin Road.

Based upon the documentation presented at this meeting, it appears this tract has been under reclamation from previous mining operations. It has been determined that this work does not require a permit. As long as this continues to be a reclamation operation on this tract, no permit is required.

Sincerely,

Tammie H. Williamson, AICP, Assistant Director
Watershed Protection and Development Review Department

Cc: Victoria J.L. Hsu, P.E., Director, Watershed Protection and Development Review
Sheila Rainosek, Division Manager, Watershed Protection and Development Review
George Zapalac, Manager, Watershed Protection and Development Review
Lynda Courtney, Watershed Protection and Development Review
Lee Lawson, Watershed Protection and Development Review
Susan Scroggins, Watershed Protection and Development Review
Pat Murphy, Watershed Protection and Development Review
Betty Lambright, Watershed Protection and Development Review

Terry Bray
Graves, Dougherty, Hearon & Moody
401 Congress Avenue Suite 2200
Austin, TX 78701

HEART OF TEXAS COUNCIL OF GOVERNMENTS

COG	Permit	Site Name	County	Type	2013 Tons	RemYds	Rate	RemTons	RemYrs
11	241D	Itasca Landfill	Hill	1	228,383	49,296,400	2193	54,053,503	237
11	1558A	BFI Mexia Landfill	Limestone	1	28,874	7,855,509	1371	5,384,951	186
11	948A	City Of Waco Landfill	McLennan	1	248,005	6,091,638	1042	3,173,743	13
11	1646A	Lacy-Lakeview Recycling And Disposal Facility	McLennan	1	91,494	1,354,015	1350	913,960	7

CAPITAL AREA COUNCIL OF GOVERNMENTS

COG	Permit	Site Name	County	Type	2013 Tons	RemYds	Rate	RemTons	RemYrs
12	249D	Waste Management Of Texas Austin Community Recycling & Disposal Facility	Travis	1	271,165	13,544,877	1160	7,856,029	18
12	1447A	BFI Sunset Farms Landfill	Travis	1	634,500	7,528,831	1476	5,556,277	2
12	1841	IESI Travis County Landfill	Travis	4	150,636	2,315,866	1450	1,679,003	11
12	2123	Texas Disposal Systems Landfill	Travis	1	682,383	24,922,520	1360	16,947,314	25
12	1405B	Williamson County Recycling And Disposal Facility	Williamson	1	280,063	61,256,034	1306	40,000,190	119

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CN600897888 Affiliation with RN100225754

Customer Information

CN Number: CN600897888**Name:** WILLIAMSON COUNTY [View Prior Names](#)**Legal Name:** Williamson County**Customer Type:** OTHER GOVERNMENT

Affiliation Information

Customer's Role: OWNER OPERATOR**Begin Date:****End Date:**

Regulated Entity Information

RN Number: RN100225754**Name:** WILLIAMSON COUNTY RECYCLING AND DISPOSAL FACILITY [View Prior Names](#)**Primary Business:** No primary business description on file.**Street Address:** 600 LANDFILL RD, HUTTO TX 78634 3331**County:** WILLIAMSON**Nearest City:** HUTTO**State:** TX**Near ZIP Code:** 78634**Physical Location:** 600 LANDFILL RD

Permits, Registrations, or Other Authorizations

There are a total of **9** programs and IDs for this regulated entity and customer. Click on a column name to change the sort order.

1-9 of 9 Records

Program ▲	ID Type	ID Number	ID Status
AIR NEW SOURCE PERMITS	REGISTRATION	13539	ACTIVE
AIR NEW SOURCE PERMITS	REGISTRATION	85335	CANCELLED
AIR NEW SOURCE PERMITS	REGISTRATION	91262	ACTIVE
MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	1405	CANCELLED
MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	1405A	INACTIVE
MUNICIPAL SOLID WASTE DISPOSAL	PERMIT	1405B	ACTIVE
MUNICIPAL SOLID WASTE PROCESSING	PERMIT	48024	ACTIVE
STORMWATER	PERMIT	TXR05AK38	ACTIVE
STORMWATER	PERMIT	TXR05P665	EXPIRED

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AUSTIN CITY COUNCIL POLICY WORKSHOP ON RESOURCE RECOVERY
MARCH 2, 2015

About Texas Disposal Systems (TDS)

www.texasdisposal.com

- TDS is a locally owned and operated group of businesses, which has a 37 year history of responsible management and use of discarded and waste items and which has developed facilities and business operations to meet the community's related needs.
 - Founded in 1977 in Austin by brothers Bob & Jim Gregory.
 - Integrated environmental services company with numerous interdependent business units owned by the Gregorays, with more than 700 employees.
 - Provides services to residential, commercial and industrial customers located in dozens of municipalities throughout central, southeast and west Texas.
 - Nationally recognized for highest operating standards and innovative business practices.
 - Dedicated to the development of affordable and economically sustainable resource management systems with the purpose of maximizing the diversion of discarded resources into reuse, recycling, and composting to create jobs and achieve environmental sustainability.

Austin Area TDS Facilities and Services

- 2,000 acre facility located in southeast Travis County featuring:
 - Corporate offices; Fleet maintenance; Ranch/agricultural operations; Tree Farm.
 - Type 1 Municipal solid waste landfill, composting and recycling facility – TCEQ Permit #2123 – Receives all of the solid waste collected by the City.
 - Materials Recovery Facility (MRF) for commercial and residential recyclables – Receives over 40% of the recyclables collected by the City and recyclables from other municipalities and haulers.
 - Organics processing, composting and soil blending – Garden-Ville and Texas Organic Products – organic product manufacturing for use to amend soils to maximize water retention and to feed plants with non-chemical organic soil blends.
 - Citizens drop-off and usable product resale center.
 - Construction and Demolition waste sorting and concrete and aggregate grinding.
 - Scrap metal processing and resident artist center.
 - 200+ acre eco-industrial park.
 - Garden-Ville sales outlet.
 - Exotic game ranch with over 100 different species of animals onsite, and a pavilion where more than 2,000 events have occurred to raise more than \$20 million for nonprofit organizations.
- Bee Cave and Georgetown Eco Depot/transfer stations.
- Collection, transportation and processing of residential, commercial and industrial solid waste and recyclables, with compost, transfer, and organic products Garden-Ville retail sales outlets.

Current Contracts between TDS and City of Austin

- 30-year Waste Disposal and Yard Trimmings Processing Contract
 - Executed in 2000. TDS receives 100% of the solid waste collected by the City. Contract contemplates and allows the addition of services, including:
 - Lease of TDS property for COA south service center and truck parking.
 - Grinding and/or processing of yard trimmings and wood waste at Hornsby Bend.
 - Design, build and operate a north Austin transfer station for joint use by TDS and COA.
 - Design, build and operate a recyclable materials processing and recovery facility (MRF).

- Operation of a glass pulverizing facility.
- Provision of composting services.
- 20-year Master Recycling, Processing and Marketing Services Agreement
 - Executed in 2011 for processing and marketing services for a minimum of 40%, or 2,000 tons/month, of the single stream recyclables collected by the City. Master Contract allows for the City to add future service schedules for other recycling related services (i.e. scrap tire processing and recycling).
- Waste and Recycling Collection and Hauling Services for Central Business District
 - Executed in 2014 for collection, hauling and processing services for solid waste and recyclables from approximately 30 alleys within the Central Business District 365 days per year. Contract allows for the addition of organics collections services within contract area.
- Austin Convention Center
 - Executed contract in 2010. TDS provides collection and hauling services for compostable organic materials generated at the Austin Convention Center.
- Palmer Events Center
 - Executed contract in 2010. TDS provides collection and hauling services for compostable organic materials generated at the Palmer Events Center.
- Long Center for Performing Arts
 - Executed contract in 2008. TDS provides collection and hauling services for solid waste and recyclables generated at the Long Center.

TDS and Zero Waste

- TDS views waste materials as resources and adheres to a definition of Zero Waste that emphasizes the maximum diversion of waste and discarded products away from landfill disposal through reuse, recycling, composting and job creation at an affordable cost and in a sustainable manner.
- TDS has a long and successful history of affordably diverting waste materials from landfill disposal to a higher and better use. Annually, TDS diverts more waste materials from landfill disposal through composting and recycling than the total amount of waste the City collects from its residents.
- TDS believes it is best suited to leverage its longstanding partnership with the City to achieve the City's Zero Waste goals.

Summary

- The owners and employees of TDS welcome the newly elected Mayor and Councilmembers, and we appreciate the enthusiasm and resolve to further enhance our award winning, internationally recognized City in all things related to recycling, composting, and special events waste services.
- We look forward to further introducing the Mayor and Councilmembers to TDS, our facilities, our performance record and our capabilities.
- We embrace the opportunities ahead in partnering with the City to achieve its Zero Waste, sustainability, special events, site services, composting and related job creation goals.

Contact Information: www.texasdisposal.com • 512-421-1300

Bob Gregory, bgregory@texasdisposal.com; **Adam Gregory**, agregory@texasdisposal.com; **Ryan Hobbs**, rhobbs@texasdisposal.com

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Central Registry

Detail of: **Municipal Solid Waste Disposal Permit 2123**

For: **TEXAS DISPOSAL SYSTEMS LANDFILL (RN102016698)**

3606 FM 1327, BUDA

Permit Status: **ACTIVE**

Held by: **TEXAS DISPOSAL SYSTEMS LANDFILL INC (CN600126932)**

OWNER OPERATOR Since 11/26/2001 [View Compliance History](#)

Mailing Address: PO BOX 17126 AUSTIN, TX 78760-7126

Related Information:

[Commissioners' Actions](#)
[Correspondence Tracking](#)
[Complaints](#)
[Investigations](#)
[Periodic Reports](#)
[Permit Information](#)

There is no information related to this Permit in the following categories:

Effective Enforcement Orders
Criminal Convictions
Proposed Enforcement Orders
Discharges
Emergency Response Events
Emission Events
Fish Kills
Other Incidents

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

PERMIT FOR MUNICIPAL
SOLID WASTE MANAGEMENT FACILITY
Issued under provisions of Texas
Health & Safety Code Ann.
Chapter 361 (Vernon)

MSW Permit No. 1405B

Name of Permittee Williamson County
Owner and Site Operator 301 Southeast Inner Loop, Suite 109
Georgetown, Texas 78626

Operator: Waste Management of Texas, Inc.
9900 Giles Road
Austin, TX 78754

Facility Name: Williamson County Recycling & Disposal Facility

Classification of Site: Type I Municipal Solid Waste Management Facility

The permittee is authorized to store, process, and dispose of wastes in accordance with the limitations, requirements, and other conditions set forth herein. This amended permit is granted subject to the rules and orders of the Commission and laws of the State of Texas and it replaces any previously issued permit. Nothing in this permit exempts the permittee from compliance with other applicable rules and regulations of the Texas Commission on Environmental Quality. This permit will be valid until canceled, amended, or revoked by the Commission, or until the site is completely filled or rendered unusable, whichever occurs first.

APPROVED, ISSUED AND EFFECTIVE in accordance with Title 30 Texas Administrative Code Chapter 330.

ISSUED DATE: OCT 15 2013


For the Commission